

CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT
(Amador)

PROTECT THE HISTORIC AMADOR WATERWAYS,

Plaintiff and Appellant,

v.

AMADOR WATER AGENCY,

Defendant and Respondent.

C042915

(Super. Ct. No.
01CV1191)

ORDER MODIFYING OPINION
[NO CHANGE IN JUDGMENT]

THE COURT:

Appellant's request for modification of the opinion filed March 12, 2004, is denied. However, it is ordered that the opinion be modified as follows:

On page 19, delete the last sentence of the first paragraph and the second paragraph in its entirety and substitute in their place the following:

For this reason, we must reverse the superior court's denial of plaintiff's petition for a writ of mandate and remand the case for issuance of a writ directing the Agency to set aside its certification of the final EIR and to take the action necessary to

bring the water resources section of the EIR into compliance with CEQA. (See CEQA, § 21168.9.)

This conclusion does not mean the Agency is required to start the EIR process anew. Rather, the Agency need only correct the deficiency in the EIR that we have identified before considering recertification of the EIR. The form of that correction is a matter for the Agency to determine in the first instance. (See CEQA, § 21168.9, subd. (c) ["Nothing in this section authorizes a court to direct any public agency to exercise its discretion in any particular way"].) Likewise, whether the correction requires recirculation of the EIR, in whole or in part, is for the Agency to decide in the first instance in light of the legal standards governing recirculation of an EIR prior to certification. (See CEQA, § 21092.1; Guidelines, § 15088.5; *Laurel Heights Improvement Assn. v. Regents of University of California* (1993) 6 Cal.4th 1112, 1129-1130.)

There is no change in the judgment.

BY THE COURT:

SCOTLAND, P.J.

MORRISON, J.

ROBIE, J.